

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MOHAMMED BASSIM AL-KHAFAJY,)
)
)
Plaintiff,)
)
)
v.) **NO. 3:17-cv-00394**
) **CHIEF JUDGE CRENSHAW**
CLEVELAND D. BAIN,)
)
Defendant.)

ORDER

Pending before the Court is the Magistrate Judge's Report and Recommendation. (Doc. No. 23.) No objections have been filed. In this prisoner civil rights action, Plaintiff brings Section 1983 claims against the privately-retained lawyer who represented him in a criminal case in which Plaintiff pled guilty. If proved, Plaintiff's claims would call his guilty plea in that case, for which he is currently serving a sentence of incarceration, into question. The Report and Recommendation recommends granting the Defendant's Motion to Dismiss (Doc. No. 18) for two reasons. First, the Magistrate Judge concludes that Plaintiff's claims run afoul of the "favorable termination" rule as set forth in Heck v. Humphrey, 512 U.S. 477, 481 (1994) and clarified in Muhammed v. Close, 540 U.S. 749, 750 (2004), because the claims necessarily implicate the lawfulness of Plaintiff's imprisonment and neither his conviction or sentence have been invalidated on direct appeal, by issuance of a writ of habeas corpus, or by some other appropriate action. Second, the Magistrate Judge concludes that, even if the favorable-termination bar did not apply here, Plaintiff's claims must fail because the privately-retained Defendant was not "acting under color of state law" when representing Plaintiff, the axiomatic prerequisite for any Section 1983 claim. The Court agrees with the analysis set forth in the Report and Recommendation.

Accordingly, the Report and Recommendation (Doc. No. 23) is **APPROVED AND ADOPTED**. The Motion to Dismiss (Doc. No. 18) is **GRANTED** and this case is **DISMISSED**.

This is a final order under the Federal Rules of Civil Procedure and the Clerk shall close the case.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE